REMARKS

Claims 1-20 are pending in this application. Claims 4-8 have been indicated as being allowable over the prior art of record, but stand objected to as being dependant upon a rejected base claim. Claims 1-3 and 9-20 stand rejected and are at issue herein. Reconsideration of claims 1-20 and indication of their allowability in view of the foregoing amendments and following remarks are respectfully solicited.

Examiner has rejected claims 10-13 under 35 U.S.C. §101 as claiming the same invention as that of claims 9-12 of prior U.S. Patent No. 6,725,976. The applicants respectfully submit that this ground of rejection has been overcome by the foregoing amendment to independent claim 10. Reconsideration of this ground of rejection in view of the foregoing amendment and following remarks are respectfully solicited.

Independent claim 10 has been amended to recite a motor, a gear train, an output pinion driven by the motor through the gear train, and an output rack drivably coupled to the output pinion to translate rotation of the output pinion to linear translation of the output rack. With such limitations independent claim 10 no longer claims the same invention as claim 9 of U.S. Patent No. 6,725,976. Further, claims 11-13 depend from this amended independent claim 10, and therefore also do not claim the same invention as claimed by claims 10-12 of U.S. Patent No. 6,725,976. Further, these claims are now patentably distinct from claims 9-12 of U.S. Patent No. 6,725,976 and therefore will not unjustly or improperly time wise extend the right to exclude granted by patent, and therefore will not enable possible harassment by multiple assignees. Therefore, the applicants also respectfully submit that these claims are not subject to a rejection based on nonstatutory double patenting under the judicially created doctrine of obviousness-type double patenting. That is, U.S. Patent No. 6,725,976 does not include any description or suggestion of an output pinion or an output rack drivably coupled to the output pinion to translate rotation of the output pinion to linear translation of the output rack as specifically claimed by this independent claim 10 as amended. Therefore, the applicants respectfully submit that claims 10-13 define patentable subject matter and are in condition for allowance. Reconsideration of claims 10-13 and indication of the allowability thereof at an early date are respectfully solicited.

The Examiner has rejected claims 14-20 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13-19 of U.S. Patent No. 6,725,976. The Examiner has indicated that, although the conflicting claims are not identical,

they are not patentably distinct from each other "because the only difference is 'torsion spring' vs. 'clock spring'." The Examiner has taken the position that a clock spring and a torsion spring are just two different ways of saying the same thing. As such, the Examiner has concluded that there appears to be no difference between the two recitations. This ground of rejection is respectfully traversed. Reconsideration of this ground of rejection in view of the following remarks and indication of the allowability claims 14-20 at an early date are respectfully solicited.

While the Examiner has indicated that the only difference between independent claim 14 of the instant application and independent claim 13 of the '976 patent is the recitation of a clock spring vs. a torsion spring, the applicants respectfully submit that there exists other limitations that patentably distinguish independent claim 14 from independent claim 13 of the '976 patent. Specifically, independent claim 14 requires, *inter alia,* "an output pinion drivably coupled to the gear train, the output pinion being driven in a first rotary direction by the motor; an output rack drivably coupled to the output pinion, the output rack being driven in a first linear direction by the output pinion under influence of the motor;". Independent claim 13 of the '976 patent, however, does not provide any teaching or suggestion of a linear actuator having an output pinion and an output rack drivably coupled to the output pinion that is translated in a linear direction by the output pinion under influence of the motor.

As such, these claims do patentably distinguish claims 13-20 of U.S. Patent No. 6,725,976 which include no such limitations. This being the case, there can be no unjustified or improper time wise extension of the right to exclude granted by the patent nor possible harassment by multiple assignees. Therefore, the applicants respectfully submit that claims 14-20 of the instant application are patentably distinct from claims 13-19 of U.S. Patent No. 6,725,976. Reconsideration of this ground of rejection and indication of the allowability of claims 14-20 are therefore respectfully solicited.

The Examiner has rejected claims 1-3 and 9 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,310,021 to Hightower. This ground of rejection is respectfully traversed. Reconsideration of this ground of rejection and indication of the allowability of claims 1-3 and 9 at an early date in view of the following remarks are respectfully solicited.

It is axiomatic in the patent law that in order for a reference to anticipate the claims of an application each and every limitation of the claims must be found in this single reference.

With this in mind, the applicants have studied the disclosure of Hightower '021 against the required limitation of independent claim 1 and have found that Hightower '021 fails to teach each and every limitation as required by this independent claim. Therefore, the applicants respectfully submit that claims 1-3 and 9 are not anticipated by Hightower '021.

Specifically, independent claim 1 requires, *inter alia,* "an output rack drivably coupled to the output pinion to translate rotation of the output pinion to linear translation of the output rack." Hightower '021, however, does not include any such rack and pinion mechanism to provide a linear actuator. Instead, the motor driven, spring returned rotary actuator of Hightower '021 provides only rotation of the output shaft. This output rotation rotates the damper between an open and closed position. No linear translation is provided by Hightower '021 whatsoever.

Additionally, independent claim 1 requires, *inter alia*, "a manual override mechanism..."To meet this limitation the Examiner points to element 25 of Hightower '021. However, element 25 is not described as being a manual override mechanism, but instead is described as being the output shaft that is driven by the motor driven gear train to rotate the damper to an open or closed position. The applicants have thoroughly studied the disclosure of Hightower '021 and unable to find any teaching or suggestion that this output shaft 25 could serve as a manual override mechanism having a user accessible interface and operating in conjunction with the gear train to allow manual positioning of the output pinion and of the output rack as required by independent claim 1.

Still further, independent 1 requires, *inter alia*, "a manual locking mechanism having a second user accessible interface, the manual locking mechanism engaging the gear train to prevent rotation of the output pinion in a first rotary direction and to prevent linear translation of the output rack in a first linear direction." The applicants have thoroughly searched the disclosure of Hightower '021, but where unable to find any teaching or suggestion of such a manual locking mechanism. The applicants also note that the Examiner has failed to identify any portion of Hightower '021 that meets this limitation. Instead, the rotary actuator of Hightower '021 is concerned with providing a rotary actuator in which kinetic energy, upon stopping of the output shaft, is dissipated by providing a lost-motion drive connector between the output shaft and the final output gear of the gear train. However, this lost motion connection does not provide any manual locking mechanism nor a manual override mechanism as required by independent claim 1.

In view of the foregoing, the applicants respectfully submit that Hightower '021 does not anticipate claims 1-3 and 9 because it fails to teach or suggest each and every limitation of this independent claim 1 as discussed above. Reconsideration of this ground of rejection and indication of the allowability of claims 1-3 and 9 at an early date are respectfully solicited.

The Examiner has objected to claims 4-8 as being dependent on a rejected base claim, but has indicated that they would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. While the applicants wish to thank the Examiner for the thorough consideration of these claims, they respectfully decline the invitation to amend these claims to independent form in view of the traversal of the anticipation rejection of claims 1-3 and 9 by Hightower '021 as discussed above. Reconsideration of this ground of objection in view of the foregoing remarks with regard to Hightower '021 and indication of the allowability of claims 4-8 at an early date are respectfully solicited.

If the Examiner believes that a telephonic conversation will aid in the resolution of any issues not resolved herein, the Examiner is invited to contact the applicants' attorney at the telephone number listed below.

Respectfully submitted,

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